

9 FAM PART IV Appendix N, 500 CONSULAR ROLE IN ADJUSTMENT OF STATUS CASES

(TL:VISA-278; 05-11-2001)

9 FAM 501 BASIS FOR CONSULAR ROLE

(TL:VISA-152; 9-9-96)

Locally available information is sometimes valuable to INS in adjudicating applications for adjustment of status. INS requests all such applicants to complete Form G-325A, Biographic Information, a copy of which will be sent to any consular office that issued the applicant a nonimmigrant visa during the previous 12 months. INS will suspend the processing of the application for a period of 60 days, commencing on the date Forms G-325A are mailed to posts. If, at the end of that period, no response has been received from the appropriate post(s), INS will assume that no pertinent information has been developed and adjudicate the application.

9 FAM 502 POST ACTION ON RECEIPT OF FORM G-325A

9 FAM 502.1 Non-problem Cases

(TL:VISA-152; 9-9-96)

Upon receipt of the copy of Form G-325A, the post should immediately check internal post records and any other readily available sources. If this check reveals no information which might constitute grounds for denial of adjustment of status, and if there is no reason to believe that such information would be developed by further investigation, the post need not communicate with INS and may destroy the copy of Form G-325A without further action.

9 FAM 502.2 Police Certificate Possibly Needed

(TL:VISA-152; 9-9-96)

If information is brought to light, however, that indicates the police may have a record that has a bearing on the alien's eligibility for adjustment of status, the consular officer should so inform the INS office that requested the clearance, in order that INS may request the alien to obtain a police certificate directly from the appropriate police authority.

9 FAM 502.3 When Derogatory Information at Post

(TL:VISA-278; 05-11-2001)

If the post's initial check reveals information which may constitute grounds for denial of adjustment of status, or that indicates that further investigation would develop such information, the post should send a "VISAS DECEMBER" telegram [see 9 FAM PART IV Appendix E, 302] to the INS office which originated the Form G-325A. Upon receipt of such a telegram, INS will continue to withhold action on the application until conclusive information is received from the post.

9 FAM 503 RELEVANCE OF INFORMATION

9 FAM 503.1 Types of Useful Information

(TL:VISA-278; 05-11-2001)

Information which might constitute grounds for denial of adjustment includes:

- (1) Possible grounds of ineligibility;
- (2) Discrepancies between statements in the visa and the adjustment applications; or
- (3) A discrepancy in the claimed priority date or foreign state chargeability. [See 9 FAM PART IV Appendix N, 509 .]

9 FAM 503.2 Generally Irrelevant Information

(TL:VISA-152; 9-9-96)

INS need not be notified of documents in the post's files such as an approved visa petition, approved labor certification, affidavit of support or any civil document unless:

- (1) INS specifically requests such documents in a particular case, or
- (2) Such documents relate to information which might constitute grounds for denial of adjustment of status.

Consular officers should also note that assurances of intention to depart the United States given at the time of application for a nonimmigrant visa are generally not relevant to the processing of adjustment of status applications.

9 FAM 504 TRANSMISSION TO INS BY CABLE

9 FAM 504.1 Expeditious Reply Necessary

(TL:VISA-152; 9-9-96)

Posts must send without delay derogatory information or facts raising questions regarding an applicant to the appropriate INS office in a VISAS DECEMBER message as it is developed. All messages to INS concerning INA 245 cases must include the alien registration ("A") number if it is known.

9 FAM 504.2 Follow-up Messages

(TL:VISA-152; 9-9-96)

If the investigation is not complete at the time the VISAS DECEMBER message is sent, posts should add the estimated approximate completion date after the "A" number, as in the following example: "VISAS DECEMBER JOHN DOE A12 345 678 March 31." If the case is not complete when the original estimated date is reached, the post must send a second VISAS DECEMBER message, referencing the first, with a new estimated completion date and must repeat this process as often as necessary. The Department expects that a second message will seldom be necessary.

9 FAM 504.3 Message Addressee

(TL:VISA-152; 9-9-96)

These messages need not be addressed to the Department. Routine unclassified telegraphic messages addressed directly to INS offices in the United States are automatically transmitted from INS Central Office (HQINS) to the appropriate district office.

9 FAM 505 TRANSMITTING INFORMATION TO INS BY MAIL

(TL:VISA-152; 9-9-96)

After transmitting the telegraphic notice to INS as provided above, the post should note the details of the information on Form G-325A, or in a memorandum attached thereto, and return it by direct airmail to the originating INS office.

9 FAM 506 TRANSMITTING CLASSIFIED INFORMATION TO INS

(TL:VISA-152; 9-9-96)

If any of the information to be transmitted to INS is classified, the consular officer should cover such information in a memorandum and forward it directly to the interested INS office in accordance with security regulations. An U.S. Government agency furnishing classified information must authorize release of the information to INS. The transmitting memorandum or Form G-325A must state that the agency has given this authorization. Posts need not transmit to INS classified information which is not derogatory in nature unless it would have a direct bearing on the adjustment of status action.

9 FAM 507 TRANSMITTING INFORMATION TO DEPARTMENT

(TL:VISA-152; 9-9-96)

If the consular officer has reason to believe that the classified information in a specific case should be submitted to the Department, the officer may do so by memorandum, subject: "VISAS: Review by INS." In such instances, posts should return Form G-325A directly to INS with the notation:

Classified information sent to Department of State, available under the Form G-165 procedure.

It is the Department's opinion that this procedure should seldom be necessary.

9 FAM 508 COMPLETING POST'S ACTIONS

(TL:VISA-152; 9-9-96)

Forwarding derogatory information to the appropriate INS office, in accordance with the instructions above, constitutes final action. If a "VISAS DECEMBER" message has been sent previously and the completed investigation reveals no derogatory information having a bearing on the alien's eligibility, post must advise INS that "no derogatory information has been developed in the alien's case."

9 FAM 508.1 Disposition of Files

(TL:VISA-278; 05-11-2001)

Since the majority of INA 245 adjustment of status applications are approved, consular officers may consider any prior immigrant visa application by an adjustment of status applicant to have been abandoned unless the post has forwarded information that INS may believe will require follow-up action abroad. [See 9 FAM PART IV Appendix N, 510] In the absence of such circumstances, the appropriate FSN should make a notation "Applied for adjustment of status" on Form OF-224, Immigrant Visa Control Card, in the consolidated card index and mark the card for destruction at the time specified. Unless they are to be used as provided in 9 FAM PART IV Appendix N, 503.2, posts should dispose of documents in the post's A-Z files as follows:

- (1) Routinely return an approved visa petition with all supporting documents to the INS office which approved it;
- (2) Return directly to the sponsor an affidavit of support sent by a sponsor directly to the post;
- (3) Destroy Form G-641, Application for Verification of Information from INS Records, or OF-228, Request for Information From or Report to US INS Concerning Individual Alien (if any);
- (4) Return any documents, either originals or copies, submitted by the alien, such as diplomas, transcripts, or evidence of work experience (if not attached to a visa petition) to the alien's present address as given on Form G-325A.

9 FAM 509 FINAL ACTION BY INS

(TL:VISA-278; 05-11-2001)

Upon receipt of consular reports or after the expiration of the 60-day waiting period, INS will proceed with the adjudication of the application. When adjudication is completed, INS will request the Department to allocate an immigrant visa number in any case requiring one, indicating the foreign state chargeability and priority date of the alien. The Department allots numbers on the basis of the indicated foreign state chargeability and priority date. It is essential that consular officers notify INS of any discrepancy existing in either of these items. [See 9 FAM PART IV Appendix N, 503.1.]

9 FAM 510 REQUEST FOR INS INFORMATION REGARDING REFUSAL OF ADJUSTMENT OF STATUS APPLICATION

(TL:VISA-278; 05-11-2001)

If a consular report on an application for adjustment of status indicates a questionable area which could best be resolved through investigation and consideration abroad, INS will, if possible under the circumstances, withhold adjustment and instruct the alien to seek an immigrant visa at a consular office. In cases where it appears that information concerning the grounds of refusal of the adjustment of status application might be necessary for adjudication of the alien's eligibility for a visa, the consular officer should address a request for such information on Form OF-228, *Request for Information From or Report to US INS Concerning an Individual Alien*, to the INS office which handled the case.